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Supreme Court, U.S.
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No. 99-737

In the Supreme Court of the United States

OCTOBER TERM, 1999

Paul Mosley,

Petitioner,

-versus-

Halter Marine Group,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Respondent, Halter Marine, Inc. (hereinafter referred to as "Halter") submits the following Brief in Opposition to the Petition for a Writ of Certiorari submitted by Paul Mosley (hereinafter sometimes referred to as "Mosley") in this matter. Halter prays that Mosley's Petition for a Writ of Certiorari be denied because there are no compelling reasons for this Court to exercise its judicial discretion to grant a writ in this matter.

None of the considerations set forth in Rule 10 of the Supreme Court Rules regarding writ applications are present in this case. The decision of the United States Fifth Circuit Court of Appeals is not in conflict with any decision of this Court or any other United States Court of Appeal. The district court and the Fifth Circuit properly held that Mosley was the borrowed servant of Halter by applying the nine-factor borrowed servant test that has been applied under established legal precedent. Mosley has not argued that the lower courts misapplied the test or that the factors considered by the lower courts are in conflict with any decision of this Court or the law of any other U.S. Circuit Court of Appeals.

Contrary to Mosley's assertions, there is no important issue of federal law that should be determined by this Court. Mosley argues that the contractual assumption of TechServ, the lending employer, to obtain workers' compensation insurance somehow creates a "profound issue". That issue, however, was fully considered and appropriately disposed of by the Fifth Circuit in a well reasoned opinion, consistent with longstanding precedent.

Neither Halter's obligation to pay workers'compensation benefits nor its contractual indemnity rights against TechServ are germane to the issue of borrowed servant status. Halter and TechServ entered into a valid contractual agreement that shifted the burden of procuring workers' compensation insurance to TechServ. This agreement has no bearing on Mosley's status as a borrowed servant of Halter. As Mosley admits, he is being paid compensation benefits from TechServ pursuant to TechServ's obligations under the contract. Halter did not refuse to secure coverage for Mosley's injuries. It shifted the obligation to purchase that coverage to TechServ, and TechServ agreed to do so in exchange for the valid consideration that it received under the contract.

In its 1996 Total Marine Services, Inc. v. Director, 87 F.3rd 774 (5th Cir. 1996) opinion, the Fifth Circuit reaffirmed that a borrowing employer is legally obligated to pay compensation benefits to its borrowed employee. The focus in the *Total Marine* opinion was the borrowing employer's obligation to reimburse an injured worker's formal employer for compensation benefits the formal employer paid to the injured worker. The Court concluded as follows:

> ... (W)e conclude that a borrowing employer is required to pay the compensation benefits of its borrowed employee, and, **in the absence of a valid and enforceable indemnification agreement**, the borrowing employer is required to reimburse an injured worker's formal employer for any compensation benefits it has paid to the injured worker. (Emphasis added).

87 F.3d at 779.

In the above quoted passage, the Fifth Circuit acknowledged that an enforceable indemnification agreement may affect the borrowing employer's reimbursement obligation to the formal employer; however, the Court did not conclude that a borrowing employer is exempted from its compensation obligations to its borrowed employee (or loses its tort immunity) by virtue of an indemnification agreement. Indeed, the borrowing employer is required **by law** to pay compensation benefits to its borrowed employee. However, **by contract**, the employer may look to the formal employer to meet the borrowing employer's legal obligation. The **legal** obligations of the borrowing employer vis-a-vis the employee are separate and distinct from its **contractual** rights vis a vis the formal employer.

In the case at bar, *Total Marine* obligates Halter to pay compensation benefits to its borrowed employee. As such, Halter enjoys the tort immunity provided by the LHWCA. Whether Halter is entitled to seek indemnification and/or reimbursement of any compensation benefits it may owe to Plaintiff is irrelevant to and distinct from Mosley's status as the borrowed employee of Halter.

CONCLUSION

The Court should deny Mosley's Petition for a Writ of Certiorari because there are no compelling reasons to grant writs in this case. The decision of the United States Fifth Circuit Court of Appeal is based upon a proper application of the longstanding borrowed servant doctrine. All issues raised by Mosley in his Petition for a Writ of Certiorari have been previously addressed by and properly disposed of by the lower courts.

Respectfully submitted:

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